

RECORD COPY

Report on Valuation of Property Taxes in Assam

ABHIJIT DATTA

Reader in Municipal Administration
Indian Institute of Public Administration
New Delhi



L 231x5411

122

CENTRE FOR URBAN STUDIES

THE INDIAN INSTITUTE OF PUBLIC ADMINISTRATION

INDRAPRASTHA ESTATE, RING ROAD

NEW DELHI-110002

1971

eUS

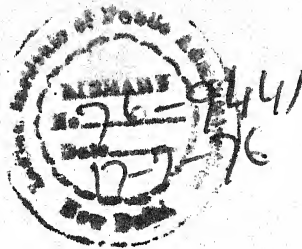
RECORD COPY

Circulation Copy

REPORT ON VALUATION OF PROPERTY TAXES IN ASSAM

Abhijit Datta

Reader in Municipal Administration
Indian Institute of Public Administration
New Delhi



IIPA LIBRARY



9441

May, 1971

Report on Valuation Of Property Taxes in Assam

Contents

	<u>Page Nos.</u>
Introduction	1
Basis of Valuation	4
Valuation Organisation	16
Ancilliary Matters	22
Acknowledgements	26

Introduction

The Government of Assam has recently created a post of a Chief Valuation Officer in the Directorate of Municipal Administration to form the nucleus of a State-wide valuation organisation for undertaking valuation of properties in the municipal areas of Assam for taxation purposes. Simultaneously, in a number of towns the State Government has appointed either full-time or part-time valuation officers to undertake quinquennial valuation of properties. The Chief Valuation Officer is charged with the responsibilities of supervising the valuation work done by the Valuation Officers and coordinate their activities.

In the absence of any existing valuation code under Indian conditions, there is hardly any settled body of principles that can be readily applied by a set of officers unfamiliar in the complicated field of property valuation. Moreover, such a code is extremely difficult to prepare where the basis of property valuation is presumptive or "reasonable" rent. The work is empirical in nature, done on the basis of comparable rent of similar properties put to similar use in similar localities.

Apart from the absence of any simple guideline with regard to valuation of properties for municipal taxation, the position is further complicated due to the existence of rent control legislations in all the States, including Assam. The Taxation Enquiry Commission, as early as 1955, pointed out:

"For our purposes, the controlled rent must be assumed to be the reasonable rent; and we are unable to agree that municipalities should in effect be permitted to ignore the very fact that a particular limit has been set by statute to the rent which the landlord may levy and made the assumption that he may reasonably obtain a rent which exceed that maximum". (vide Report of the Taxation Enquiry Commission, Vol. III, P.377, 1955).

This view is also being expressed by the various High Courts and the Supreme Court in recent years in deciding various cases concerning the valuation of properties for municipal taxation. Recently, the High Court of Assam and Nagaland had occasion to examine a case where the actual rent paid was ignored by the municipality on the grounds of unreasonableness. The Court held (on 19.6.1970) that the presumptive "standard" rent for rent control purposes must be taken into account in deciding the "reasonable" rental value of properties for municipal taxation. The Government of Assam is considering the

implications of this judgment and, in this context, decided to consult the Indian Institute of Public Administration's Centre for Municipal Administration on the problems of valuation of properties in relation to the situation obtaining in Assam. Accordingly, an on-the-spot study was made by the writer on behalf of the Indian Institute of Public Administration, New Delhi, who visited Assam during April 22-30, 1971 resulting in the present report.

Basis of Valuation

The Rental Method: The existing method of valuation of properties for municipal taxation is gross reasonable rental at which a holding is expected to be let. The legal liability for the payment of the tax is on the owner. Property tax is a tax on land and buildings. Although the presumptive rental method is an imitation of the English system of valuation, there are important differences between the systems in the two countries. In England, the tax is on the occupier (since legally the Crown is the ultimate owner of all land). Also, in England the tax is on hereditament, which includes not only the physical property, but also the titles attached to it.

Even when the rental method is actually followed in respect of valuation of most of the properties, there are special classes of holdings, which are incapable of producing rent, that are valued differently. For instance, institutional properties (like schools, hospitals etc), or government properties are valued on the basis of capital investment, less depreciation. Similarly, places of entertainment or recreation such as cinemas, clubs, hotels etc.

are valued in a way which indicate the revenue earning capacity of these establishments, like, the number of seats, type of rooms, etc. In practice, therefore, the rental method invariably is accompanied by other methods, and the existing system of valuation is far from exclusive.

The rental basis has the advantage of both certainty, as well as flexibility. However, it also suffers from a few serious disadvantages, such as, (i) the combination of both actual and hypothetical rent makes the valuation complicated; and (ii) due to the operation of rent control in the urban areas, the determination of rental value leaves little flexibility on the part of the valuer. On the economic front, the rental system of valuation discourages new building construction as this would give rise to additional tax liability. This might be particularly serious from the point of view of the need to encourage rapid development of the urban centres in a relatively under-developed State like Assam.

Here we would primarily concentrate on the effects of rent control legislations, in the light of a few recent court judgments. Afterwards, we shall turn our attention to the broader economic questions, and the related technical issues, concerning alternative bases of property valuation.

Recent court judgments on rent control: The existing hypothetical rental method of valuation of properties for the purposes of municipal taxation in India is being questioned by the courts, in view of the provisions of the rent control legislations in force in various States. Municipal legislation is regarded as a general law, which must give way to the provisions of a special legislation on rent control.

In a decisive case, Corporation of Calcutta Vs. Sm. Padma Debi and others (A.I.R. 1962 S.C. 151), the Supreme Court held "That in determining the gross annual rent statutory limitation of rent circumscribes the scope of the bargain in the market and, therefore, in no circumstances the hypothetical rent may exceed the limit". This restriction operated in respect of those properties for which the "standard rent" has actually been fixed under rent control legislation.

Recently, the High Court of Assam and Nagaland held in Lalchand Chhaganmal and others Vs. Municipal Board of Karimganj (A.I.R. 1970 Assam and Nagaland 214) that "the gross annual rental at which a holding may reasonably be expected to let, cannot exceed the standard rent for such holding as fixed by the legislature under the provisions of the Rent Control Act". Accordingly, the High Court rejected the valuation made by the Municipality

on the basis of hypothetical rent, which was in excess of actual rent paid, and remanded the case to the trial court for determining the standard rent payable under the prevailing Rent Control Act. In Assam, there is no special tribunal for the fixation of rent under rent control legislation, and the jurisdiction of the civil courts is preserved.

The most important case decided recently by the Supreme Court, in Guntur Municipal Council Vs. Guntur Town Rate Payers' Association etc. (A.I.R. 1971 S.C. 353), it has been categorically held that "the assessment of valuation for the purposes of tax must be made in accordance with and in the light of the provisions of the Rent Act which would be in force during the period of assessment". Even in respect of those properties where standard rent has been fixed, the municipalities will have to arrive at their own figure of fair (standard) rent by keeping in view the principles laid down in law for its determination. Undoubtedly, this is a radical departure from the position since the decision in Padma Debi's case.

In the Guntur Municipality case, according to the original records (paragraph 12 of the plaint), the Plaintiff Association comprised of all the three classes of rate-payers, viz. (i) where the rate payer is in personal occupation of the house; (ii) where he has partly let it out; and (iii)

where he has fully let it out. Evidently the term "reasonably expected to let" in the municipal legislations as the guiding principle of property valuation can no longer be considered independently of the level of "standard" or fair rent envisaged under the rent control legislations. In practical terms, this means that except where actual rent of a holding is below the standard rent, a municipality would not be able to assess property tax at a level which exceeds the controlled rent, irrespective of the actual rent. For the purpose of valuation and assessment of property tax, the municipalities are to apply the principles for the determination of "standard" rent under the Rent Control Act, in respect of these properties where this has not been actually fixed by a competent authority.

Consequences of the court judgments: The consequence of these judgments, cited above, are two: (a) the phrase "reasonable" rental in the municipal legislations for the determination of the annual value of holdings in effect means "fair" (or standard) rent for the purposes of rent control; and (b) the municipalities are being used as executing agencies for the determination of standard rent as defined in the rent control legislations. Neither of these could be appropriate functions of a municipality.

In Assam, there are two additional complications - one arising out of the absence of an administrative agency,

like the rent controller for the determination of standard rent; and the other, the method of such rent determination follows historic (rather than current) capital cost of land and buildings. As a result, not only are the municipalities denied the right to tax on the basis of an objective and independent determination of "reasonable" rent of holding, they are further compelled to change the basis of valuation from hypothetical gross rental to historic capital cost.

The way out of this problem is to sever the nexus between the municipal and rent control legislations and, more specifically, to make municipal taxation provisions self-contained so that municipal determination of its tax base is not affected by the operation of other legislations.

Amendment in Assam Municipal Act: In the light of the foregoing, we would now examine the relevant provision of the Assam Municipal Act, 1956, and consider what amendments, if any, are needed. Section 79(1) of the Act says: "The annual value of a holding shall be deemed to be the gross annual rental at which the holding may reasonably be expected to let". This provision, in substance, occurs in all the municipal legislations in the country. In view of the Guntur Municipality case, and in the light of the definition of "standard" rent contained in the Assam Urban Areas Rent Control Act,

1966 (Section 2 E), the municipalities in Assam are obliged to follow 'standard' rent as the basis of valuation for the purposes of property tax.

The phrase "reasonable" rent is likely to attract the provisions of rent control legislation, even after the inclusion of a clause in section 79(1) of the Assam Municipal Act, 1956, such as : "notwithstanding the method prescribed under the Assam Urban Areas Rent Control Act, 1966, for calculating its standard rent". Efforts must be made to relate municipal rental valuation on the basis of actual rent. Accordingly, section 79(1) of the Assam Municipal Act, 1966, may be redrafted as follows:-

S.79(1) "The annual value of a holding shall be deemed to be the gross annual rental at which the holding may reasonably be expected to let where it is not let out, or the gross annual rental at which it is actually let out".

Although the Supreme Court has interpreted the word "reasonable" to mean "standard" rent in respect of dwellings; with regard to commercial properties, like, cinemas, hotels, places of entertainment and recreation, it is doubtful if the same consideration would hold good. In any case, it may not be wise to totally abandon the scope for flexibility in rental valuation for all times to come. Where a holding is not let out, or is incapable of producing rent, the municipal valuers would have no

difficulty in calculating "standard" rent and estimate the rateable value accordingly. Where, however, the holding is actually let out, at a level higher or lower than "standard" rent, the actual rent would be the basis of valuation. This would also take care of low rent in old buildings. The suggested amendment is basically identical to the provisions regarding the annual lettering value in the Madhya Pradesh Municipalities Act, 1961 (section 126), except for the last para, which reads:

"x x x Provided that if it appears to the Council that the annual rent of any building or land is much lower than the annual rent for which it might reasonably be expected to let the annual letting value in respect of such building or land".

A more straight-forward approach of taxing the greater sum between the actual and the "standard" rent may also be formulated in terms of the following amendment to section 79(1) of the Assam Municipal Act, 1956:

S.79(1). "The annual value of a holding shall be deemed to be the gross annual rental at which the holding is actually let or the "standard rent" as defined in the Assam Urban Areas Rent Control Act, 1966 (Assam Act II of 1967), whichever is greater".

This amendment would not, however, take care of the special problems of taxing commercial properties or the owners of old properties as mentioned earlier. Moreover, it may not be desirable to specifically take cognisance of "standard" rent in a municipal legislation, whatever may be the trend of current legal opinion.

Compensatory grant to the municipalities: The revenue loss on the part of the municipalities due to the operations of rent control legislation need to be compensated by the State government, since it is the direct outcome of a specific State measure. Even when the municipalities adopt actual rent for determination of annual value of holdings, where it exceeds "standard" rent, it would not be possible to completely recover the loss of tax revenue due to the abandonment of the "reasonable" rent basis. It is necessary, therefore, to estimate the extent of such revenue loss to the municipal exchequer and compensate it through an equivalent State grant. The State government would then be justified in prescribing a minimum rate of property tax and also to expect a gradual rise of the tax rate over a period of years, so that the grant may be reduced over a period of time.

Alternative valuation bases: We have already seen the difficulties of working with the rental basis of valuation of properties, particularly with rent control legislations operating in most of our urban centres. From time to time, there has been thinking in India about the desirability and feasibility of adopting alternative bases of property valuation, but these have not been seriously considered partly on account of inertia, and partly due to the complexities involved in their adoption. For instance, the Local Finance Enquiry Committee (1951) considered the question

of suitability of introducing the capital method of property valuation, but rejected the suggestion by observing that "there should be no change from the well-tried basis of rent to the more or less uncertain basis of capital value". In the same vein, the Taxation Enquiry Commission (1955) concluded: "The fixation of rental value of residential and rental out buildings, which form the bulk of the buildings in towns and cities, is simpler than the determination of their capital value. Further, capital values of properties fluctuate to a more significant extent than rental values. The levy of the tax on the basis of actual reasonable rent is levied on the actual or potential income from the property and to that extent is a more equitable method of taxation than one based on capital value".

Much of these advantages in favour of rental basis of valuation have eroded in recent years due to the operation of rent control in most of the States, including Assam. At this stage, it is appropriate to re-examine the advantages of the present system as actually being practised, and the suitability of change-over to an alternative system. The advantages of the capital value system, for instance, are: (a) it is more comprehensive; (b) it is possible to frame an elaborate valuation code on this basis; (c) since it is based on current sale prices, the rising market price of land can also be taxed; (d) vacant and unattached land would be put to more efficient use.

The limitations of the capital value system are:

(a) this calls for reliable records regarding the cost of land and buildings thereon; and (b) this assumes the existence of a corps of qualified professional valuers for municipal assessment purposes. It is possible to get over both these initial hurdles in the way of change-over to the capital value base over a period of time. The most reliable indicator of current value is, of course, the registered sale deed records. However, if the sale deeds do not reflect the current value of property, due either to insufficient sale data or the prevalence of under reporting in the sale deeds, attempts will have to be made to estimate property value on the basis of cost data.

Within the system of capital value, one can think of two variants (a) full market value (of land and building), of (b) unimproved value (of land).

Although the existing practice is to tax on the full market value, in most of the countries that have adopted capital value base (like the U.S.A.), the unimproved value (or site value) taxation is in vogue in the newly developed territories (like Australia and New Zealand). Where industrialisation is still in the process of fully establishing itself, and the potentiality of urban development is great, the site value taxation would be more appropriate. Curiously enough, the rental value and

market value of real estate are both appropriate bases in a developed urban area, where there is heavy renting and the scope for new buildings to come up are limited. In the situation obtaining in most of India's urban centres - barring perhaps the metropolitan cities - the site value taxation is more relevant. One should remember that the rates of tax under each of these bases would be different in order to produce the same revenue, as the tax bases are not identical.

It is also possible to combine both these two types of capital valuation within a single country (or a single province/state). In New Zealand, for instance, this is permissible and the local authorities have the option to choose one or the other method of valuation. Under Indian conditions, the bigger municipal corporation with a population of, say, more than 500,000, may go in for market value of capital system, while in the other towns and urban areas site value taxation may be resorted to. So far as Assam is concerned, the site value taxation undoubtedly holds better prospects of offering successful change-over from the prevailing distortions of "reasonable" rental.

Valuation Organisation

Statutory basis: According to the provisions of the Assam Municipal Act, 1956 (section 86), an assessor is to be appointed by a municipality, not being its employee or councillor (commissioner) with the approval of the State government. Since general valuation takes place every five years, it is presumed that a municipality will make necessary arrangements for appointing an assessor for quinquennial valuation of municipal property. Since the State Government reserves the right to rescind municipal valuation on grounds of insufficiency, excessivity or inequity, in practice the municipalities generally approach the State government to depute one of its officers for undertaking the general valuation. It has been common experience with the municipalities that the State government is not always in a position to depute officers for this purpose, nor is there a corps of specialised personnel in the State civil service in the complicated work of property valuation. One recent committee observes: "The present practice of appointing a government servant or a non-official by the municipality with Government approval has outlived its usefulness and should be abandoned". (vide para 14, Report of the Assam Municipal Finance Committee, 1967).

Administrative relations: The Government of Assam has recently created the post of a Chief Valuation Officer, and 2 full-time

and 4 part-time Valuation Officers to undertake the general assessment in respect of six municipalities. It is not quite clear what is the relationship between the concerned municipalities and the valuation officers (i.e., are the valuation officers deputed to the municipalities by the State government?) or what is the exact locus standi of the Chief Valuation Officer in the valuation process? Apparently, the Chief Valuation Officer offers technical guidance and supervision to the Officers; but, the exact administrative relations between them are yet to be clarified.

The present arrangement thus lacks a statutory basis, as well as an organisational focus. It is necessary, therefore, to clarify these two aspects and bring out the implications of a State Valuation Organisation in Assam.

If the State Government decides to centralise municipal valuation, the power of the municipal councils to appoint assessors for quinquennial valuation needs to be withdrawn. As a logical corollary, the final valuation responsibility and the review power should vest in the State Government. Although the Act gives final review power to the government officer undertaking municipal valuation work, the review committee becomes redundant when the power of appointing statutory assessors are withdrawn from the municipalities. Assuming that the State government decides to create a statutory valuation organisation for assessing property

in the municipal areas for taxation purposes, what would be the organisation like: it is desirable to formalise the existing relations between the Director of Municipal Administration and the Chief Valuation Officer, by placing the latter under the former within the same organisation. This leads us to the conception of the Directorate and the extent of powers and functions delegated to the Director by the State government. If the powers presently exercised by the Divisional Commissioners are transferred to the Director, and he is made responsible for the administration of a State-wide municipal cadre of officers, then the justification and viability of the Directorate becomes obvious.

Personnel: Valuation of urban property requires specialised skill. It is unlikely that such skill would be acquired by government officers on temporary deputation to the valuation organisation. If the valuation work is suitably staggered to cover all the municipalities and town area committees in Assam, and if separate arrangements for valuation of property is made for Gauhati, it is possible to have about 6 valuation officers to take care of the work-load for the entire State. A group of six specialised valuers, with limited promotion prospects in the organisation would hardly be conducive to recruitment and retention of necessary staff, unless they form part of the larger cadre of State revenue administration. The difficulty of attaching the municipal valuers with the

State revenue administration are two: (a) land revenue administration is not a specialised activity for the 'generalist' administrators to be in charge of assessment and, (b) with the growth of panchayati raj, it is possible that in future land revenue administration might be devolved to these authorities, thereby making agricultural land assessment a local responsibility.

The other possibility of creating a State-wide cadre of municipal executive and valuation officers also might be thought of. This will, of course, depend on the State government's decision to create such a cadre consisting of a group of generalist administrators with a handful of specialised valuers. If the conception of the cadre is mixed, then there is no reason why other technical officers, such as health officers and engineers, should not also be included in the cadre. Such technical officers could be placed for a group of districts, so that all the municipalities within the area might avail of their services. Here the difficulty would be the heterogenous nature of the cadre, and the lack of technical guidance to these officers, unless for technical purposes they are attached to the State technical departments. The administration of such a cadre of municipal officers would be exceedingly complex and call for coordination of the needs of the municipalities on the one hand, and the ability of the State technical directorate to meet these needs.

For practical reasons, therefore, constitution of either a specialised State cadre of municipal valuation officers or a combined State cadre of municipal officers, with generalist and specialist administrators, seem unworkable.

Chief Valuation Officer: The only other possibility is to have a Chief Valuation Officer specialised in valuation work in the State Directorate of Municipal Administration to guide and oversee municipal valuation done by their own executive officers. This presupposes the need for appointing executive officers in all the municipalities, who could look after both annual and statutory quinquennial valuation of properties. In the case of town area committees, the existing arrangement of entrusting the executive functions to the Chairmen could continue and the assessment responsibilities may also be entrusted to them.

The functions of the Chief Valuation Officer, in this scheme of things, would be: (a) review of assessment, (b) inspection of assessment work in progress, and (c) rendering technical guidance and advice to the municipal executive undertaking assessment work.

The logical base of recruitment of the Chief Valuation Officer would have been the State revenue administration. But, as pointed out earlier, the land revenue

is administered by generalist officers, and in the absence of any specialised cadre of officers at the State level to administer any other direct tax, the Central Government may have to be approached to depute one of its officers having experience in direct tax administration. Alternatively, the services of a professional valuer may be obtained from the open market.

Ancilliary Matters

Unified cadres:

We have already indicated the possibility of constituting a State-wide cadre of municipal executive officers. The pros and cons of such a course of action needs to be considered in the light of cadre strength, promotion prospects and so on. On the other hand, the financial position of the municipalities also will have to be considered, so that the administrative cost bears a reasonable relation to total municipal expenditure. In view of the smaller number of municipalities in Assam compared to other States in India, a single cadre of about 30 officers may not be a viable proposition. If the bigger municipalities having more than, say, 50,000 population are manned by selection grade officers (equivalent to A.C.S.I), there would be about 5 or 6 such posts.

As against the wholesale provincialisation of municipal service, the municipalities may be staffed properly with matching State grants. Naturally, the standards of recruitment for these officers will have to be prescribed and their appointments confirmed by the State government.

State Directorate: In the absence of the responsibility for municipal administration, the State Directorate of Municipal Administration would be primarily concerned with: (a) inspection, (b) prescribing methods and review of municipal valuation, (c) preparation of accounts and budgeting codes and rendering advice in these matters, (d) coordination of development activities in the municipalities with State assistance and help in the formulation of municipal development plans, (e) preparation of a general grants code and a scheme of tax-sharing, (f) collection, analysis and publication of municipal statistics of finance, staff, functions, etc., (g) advising the State government regarding the required changes in the basic law on municipal administration.

To achieve these ends, the Directorate needs to be adequately staffed. It would perhaps be better to associate the State Town Planning Organisation with the Municipal Directorate. For this purpose the Directorate of Municipal Administration may be given the overall charge of town

planning, as in Tamil Nadu. The field inspectors of the Directorate may be placed at the Divisional level.

Overall reorganisation: Obviously, any basic change in the pattern of State administration would affect the structure and functions of the State Directorate of Municipal Administration. Even within the sphere of municipal administration itself, which would include not only the internal management structure, but also the wider sphere of state-municipal relations, there seems to be need for a closer look. The present municipal legislation, in its contents and spirit, reflects the laissez-faire type of municipal administration, with emphasis on popular representation and minimum set of Statecontrols. It is time that the system is updated to tackle the needs of planned development, without sacrificing local democracy.

Secondly, there is need for harmonising the needs of urban and rural areas, so that municipal government is viewed not as a separate and isolated entity, but as a facet of an unified system of local government. The institutional dichotomy that exists at present in the system of local government can no longer be maintained or justified. It is necessary, therefore, to have a fresh approach to the question of reforms in municipal administration. If reforms are introduced

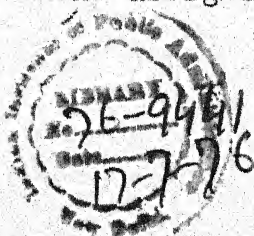
piecemeal and with divergent motives, it is possible that the total impact of the change might lead to more confusion, if not disharmony in State-local relations. With these considerations in view, it is suggested that a comprehensive enquiry into the entire structure of municipal administration in Assam be made so as to usher modernity in the ancient institution of local government.

Acknowledgements

Grateful thanks are due to the officers of Assam Government in understanding the problem areas covered in the present report. Shri T.S. Gill, Secretary to the Government of Assam, Shri P. Sen, Director of Municipal Administration and Shri R.N. Bora, Chief Valuation Officer, spared no pains in discussing the various issues with the author. Legal discussions regarding the problems of municipal valuation were made with Shri J.P. Bhattacharjee, Advocate, Gauhati High Court; Shri L. H. Marathe, Formerly, Chief Assessor and Collector, Municipal Corporation of Delhi and at present Municipal Tax Consultant; Dr. S. N. Jain, Director, Indian Law Institute, New Delhi; and Shri K. B. Nambyar Editor, Supreme Court Reports. None of the officials and experts mentioned, however, should be identified with the views expressed in the report.

Finally, the author would like to express his gratitude to Prof. G. Mukharji, Director, Indian Institute of Public Administration, New Delhi, for constant encouragement and help in understanding and completing the present assignment.

May, 1971



A.D.